



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: TUNOI, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 135 OF 1997 (57/97 UR)

BETWEEN

JAMES MWASHORI MWAKIO .....APPLICANT

AND

KENYA COMMERCIAL BANK LTD. ....RESPONDENT

**(Application for leave to file Notice of Appeal and  
Record of Appeal out of time in an appeal from a  
ruling of the High Court of Kenya at Nairobi (Mr.  
Justice Pall) dated 26th July, 1995**

**in**

**H.C.C.C. NO. 2815 OF 1980)**

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**RULING**

Civil Appeal Number 48 of 1997 was struck out on June 6th, 1997, because the record of appeal did not include some pages of the ruling appealed against as is mandatorily required by rule 85 (1)(g) of the Rules. Immediately thereafter, the applicant, the appellant in the said appeal, lodged this application which is the third in his attempts to lodge a proper record of appeal. I agree with Mr. Le Pelley, counsel for the respondent, that the respondent has actually been harassed by the applicant in such frivolous and vexatious proceedings and that the respondent should not be put to the expense of the applicant's further attempts to file his intended appeal. I also agree with him that the decision of Pall, J. (as he then was) may be perfectly correct. But I am not now hearing the substantive appeal. However, in all the circumstances of the case, I am disposed to exercise my discretion in favour of the applicant so that his complaint may be ventilated by this Court on merits and decided finally. The application is accordingly allowed as follows:-

- 1.The Notice of Appeal shall be filed within 7 days from today.
- 2.The record of appeal shall be lodged within 30 days from the date of filing the Notice of Appeal.
- 3.The applicant shall pay the respondent costs of this application which I assess at Shs.4,000/= to be paid before the filing of the Record of Appeal, failing which this application shall stand dismissed.

I am unable to concede to the applicant's peculiar prayer to order Mr. Le Pelley or the respondent to assist the applicant to lodge a proper appeal on the grounds that he is a layman devoid of legal knowledge.

**Dated and delivered at Nairobi this 20th day of June , 1997.**

**P. K. TUNOI**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**